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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

E. J., Petitioner, v. SUPERIOR COURT FOR THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT OF HUMAN SERVICES, Real Party in Interest.	A124785 (Super. Ct. for the City & County of San Francisco No. JD-07-3286)

E. J. is the maternal grandmother (MGM) and a designated prospective adoptive parent (PAP) of the minor D. Y. (born August 2007). She challenges an order of the Superior Court of the City and County of San Francisco Juvenile Division, entered April 16, 2009, which directed the minor's removal from her custody after a hearing held pursuant to Welfare and Institutions Code section 366.26, subdivision (n).[1] E. J. argues there was not substantial evidence to support the court's finding that the removal was in

[1] All further statutory references are to the Welfare and Institutions Code. References to rules are to the California Rules of Court.

the minor's best interests. As discussed below, we conclude there was no prejudicial error and deny E. J.'s petition on the merits.[2]

BACKGROUND

The San Francisco Human Services Agency (Agency) initiated this proceeding in August 2007 to establish the minor as a dependent of the juvenile court. The Agency first offered A. S., the minor's mother, informal family maintenance services while she continued to live with the minor in E. J.'s residence, together with E. J. and A. S.'s younger sisters. A. S. failed to engage in services, however, and after A. S. left E. J.'s residence in December 2007 the Agency placed the minor with E. J. as a relative foster caregiver.

The juvenile court ordered the minor's formal detention soon thereafter, and on February 21, 2008, sustained jurisdictional allegations under section 300, subdivisions (b) and (g), and made a dispositional order continuing the minor in E. J.'s care. It appears A. S. waived reunification services and genetic testing had eliminated the alleged father as biological father, so the court set the matter for a hearing to select a permanent plan pursuant to section 366.26.

An Agency report completed in March 2008 identified E. J. as a prospective adoptive family, although an adoptive home study had not yet been completed. The adoptive home study was still incomplete at the time of the section 366.26 hearing in August 2008. Nevertheless after the conclusion of this hearing the court filed an order finding the minor to be adoptable and terminating parental rights.

On April 1, 2009, the Agency filed a supplemental petition under section 387, alleging that E. J. had not completed her adoptive home study, had "been untruthful to the

[2] Section 366.28, subdivision (b), requires a timely petition for extraordinary writ in order to review an order, made after the termination of parental rights, that directs a dependent child to reside in, be retained in, or be removed from a specific placement. (See also § 366.26, subd. (n)(5).) Absent extraordinary circumstances we decide such a petition on its merits. (Rule 8.456(i)(1).)

worker," and that due to "concerns regarding the MGM, the home study cannot be approved [and] the minor had to be removed from her care."

On April 6, 2009, several days after the juvenile court continued a hearing on the supplemental petition, E. J. sent to the court by facsimile transmission an objection to removal (Judicial Council Forms, form JV-325) and a request for prospective adoptive parent (PAP) designation (Judicial Council Forms, form JV-321). (See § 366.26, subd. (n)(3)(A).) In her objection E. J. averred that the minor was not at risk of harm in her care, and that removal would be harmful to the minor because he was emotionally bonded to E. J. as his only caregiver.

On April 13, the juvenile court indicated it had granted E. J.'s request for designation as a PAP. Following an evidentiary hearing on April 16, 2009, the juvenile court ruled that it was in the best interest of the minor to be removed from his placement with E. J. This petition followed. (§ 366.28, subd. (b); see also *Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1336 (*Wayne F.*).)

DISCUSSION

When, as here, an agency decides to remove a minor from a designated PAP, and the designated PAP files a timely objection to the removal, the juvenile court must promptly set a hearing, and may not order removal unless it finds—by a preponderance of evidence—that removal is in the child's best interest. (§ 366.26, subd. (n)(3)(B); rule 5.727(g).) The designated PAP has limited standing to participate fully in the hearing, and he or she may—as E. J. did in this instance—offer evidence, examine witnesses, provide the court with legal authorities, and make arguments to the court. (*Wayne F., supra,* 145 Cal.App.4th 1331, 1334, 1343.)

E. J. challenges the juvenile court's critical finding, that removal was in the minor's best interest. She urges, in effect, that removal was *not* in the minor's best interest, because evidence indicated he had lived with E. J. his entire life, she had been his sole caretaker, and they were strongly bonded. When the court made its determination that removal was in the minor's best interest, it commented that "there is substantial risk." E. J. attacks these remarks, arguing that the evidence submitted by the

Agency was not sufficient to prove the minor was at risk of harm if he remained with E. J. In particular, she claims the court relied on evidence of problems that had occurred in the residence years before, but there was no evidence that current circumstances posed any risk to the minor.

An order regarding a child's custody or placement is generally reviewed for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Under that standard, when the facts permit more than one reasonable inference to be drawn, the reviewing court has no authority to substitute its decision for that of the juvenile court. (*Id.* at pp. 318–319.) Thus, when we review, as here, a challenged finding as to which the litigants have submitted conflicting evidence, our analysis for abuse of discretion is virtually the same as that which applies to the review of the challenged findings generally—that is, whether there is substantial evidence in the record to support the finding. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) We do not reweigh the evidence or revisit credibility issues, but view the evidence in the light most favorable to the ruling, resolving all conflicts and drawing all reasonable inferences in its favor. (See *Catherine D. v. Dennis B.* (1990) 220 Cal.App.3d 922, 931.)

Don Garlow, an Agency adoptive home study worker with over 10 years' experience, testified that he began working on E. J.'s adoptive home study in April 2008. E. J. was first required to complete an adoption application, which included a questionnaire. On the questionnaire E. J. left blank questions regarding her marital status, and checked "no" in response to questions whether she had ever been arrested for an offense other than a minor traffic infraction, and whether she had ever been reported to a child protective services agency for alleged child abuse or neglect.

In a subsequent interview in October 2008, E. J. identified C. T. as the father of her younger daughters—the half sisters of the minor's mother A. S. She said then that her relationship with C. T. ended after the birth of her youngest daughter in 2000. When Garlow received fingerprint scan results, it appeared E. J. had failed to disclose a marriage—because she was identified by a different last name than that on her birth certificate—and had also failed to disclose a criminal arrest. Garlow also found that E. J.

had a "C.P.S. history" That is, E. J. had sought an exception when the minor was first placed with her, in which she described a prior C.P.S. history as one involving a referral seven or eight years old in regards to an "ex boyfriend's inappropriate comments" to her oldest daughter, A. S.

In November 2008, when Garlow asked E. J. about the various discrepancies, she identified the ex-boyfriend as C. T. and said he currently had no contact with her daughters "at all," except "some telephone contact" that had last occurred "a few years" ago. In his first home visit, however, Garlow saw a photograph of a man and E. J.'s younger daughters, which appeared to have been taken only a year to 18 months previously, and E. J. identified the man as their father, C. T.[3]

E. J. also told Garlow she had married C. T. in 1992 before her children were born. Garlow informed her that if she was still married but separated, her husband would need to sign a declaration of marital separation in order to proceed with adoption. E. J. provided such a declaration, signed by C. T. C. T. stated in his declaration that he and E. J. had married in 2001 and had not lived together since 2005.

Garlow searched Agency archives to research E. J.'s "C.P.S. history." He found an extensive history involving A. S., who had been diagnosed with genital warts at the age of four years. There were several referrals alleging that C. T. had sexually abused A. S. A case worker who had worked to obtain an order in 1999 requiring C. T. to "stay away" from A. S. made a new referral in 2001 when he learned C. T. was "in the home and [E. J.] had married him" that year.

Garlow testified that he would "most likely not" be able to recommend approval of E. J.'s adoption application, based in part on a number of serious concerns raised in her "psychosocial inventory"—an evaluation of factors including E. J.'s judgment and her relationships with family and ex-spouses. He expressed particular concerns about the lack of judgment shown in E. J.'s continuing relationship with C. T., and the lack of

[3] E. J.'s trial counsel later introduced such a photograph, which E. J. agreed had been taken in October 2007.

truthfulness she had shown in the way she had approached her home study, which made him wonder "what else [was] missing" from the study. Garlow said he could not recommend continuing the minor's placement with E. J. based on "a substantial history and pattern of failure to protect the children in her care," beginning with her oldest child A. S. at the age of four. He regarded the risk to the minor as "fairly high" given that C.P.S. had previously been involved with the family and had offered treatment, yet the pattern had continued.

The parties stipulated that there had also been a recent incident, in which E. J. had permitted A. S.—who had a past, untreated substance abuse problem—to have an unsupervised overnight visit with the minor. E. J. admitted she did not know where A. S. lived at the time of the visit, because A. S. was homeless at the time. E. J. also admitted that she had permitted C. T. to come into the home five to seven times during the preceding 10-year-plus period, "to see the kids [and] come give them a kiss."

The Agency conceded that removal was "very unfortunate," due to the bond between the minor and E. J. and her younger daughters. Counsel for the minor stated she took "very seriously" the removal of minor "who ha[d] been in the home this long." Yet each argued that the foregoing evidence showed that E. J. had continued to allow her children to have contact with a man who had sexually abused their older sister, and that E. J. had shown a lack of veracity in the information she provided for her adoptive home study. These in turn displayed a lack of judgment and a high level of denial, which placed the minor at such risk of harm that removal was in his best interest. Viewing the evidence in the light most favorable to the juvenile court's ruling, we conclude it provides substantial support for the court's finding that removal was in the minor's best interests. There was no abuse of discretion.

DISPOSITION

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately.

_____
Graham, J.*

We concur:

_____
Marchiano, P. J.

_____
Margulies, J.

* Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.